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Kathleen Grillo
Vice President
Federal Regulatory

verizon

ORIGINAL

1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2533
Fax 202 336-7922
kathleen.m.grillo@verizon.com

September 30, 2004

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Federal Communications Commission
Office of Secretary

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Vonage Holdings Corporation's Petition for a Declaratory Ruling, WC Docket No. 03-211; Level 3 Communications Petition for Forbearance, WC Docket No. 03-266

Dear Ms. Dortch:

The attached documents were filed in WC Docket No. 04-36, In the Matter of IP-Enabled Services. Given the similarities between the issues in this docket and the issues involved in the above-referenced proceedings, please place the attached documents on the record in the above-referenced proceedings.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Kathleen Grillo

Attachments

cc: Terri Natoli

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Marlene H. Dortch
Secretary
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445 12th Street, SW
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Re: <u>IP-Enabled Services, WC Docket No. 04-36</u>

Dear Ms. Dortch:

Recently, Verizon has submitted extensive evidence describing the state of competition for high-capacity services in the largest MSAs where Verizon provides service as the incumbent local exchange carrier.[1] This evidence, which is enclosed, includes detailed maps graphically depicting the scope of competition as well as white papers, declarations, and other supporting materials and is relevant to this proceeding for the following reasons.

First, the evidence demonstrates that competing providers are <u>not</u> dependent upon incumbent special access services to serve customers in these markets. Contrary to Time Warner Telecom's claims that "[t]here are no non-ILEC sources of supply for the vast majority of high-capacity loops demanded by all but the smallest business customers,"[2] these materials demonstrate that competing providers have deployed their own loop and transport facilities to tens of thousands of office buildings in these MSAs. The market realities are that:

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1 *See* Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, CC Docket Nos. 01-338, 98-147 and 96-98 at 10, 15 (filed June 24, 2004); Letter from Michael E. Glover, Verizon, to Marlene H. Dortch, FCC, CC Docket Nos. 01-338, 98-147 and 96-98 at 19, 29 (filed July 2, 2004).

2 *See* Comments of Time Warner Telecom, filed May 28, 2004, at 9. *See also* MCI Comments at 19 ("Incumbent LEC special access services . . . are the primary means by which IP-based services are provided to enterprise customers."; Comments of Z-Tel Communications, Inc. at 14 ("Z-Tel can today only turn to *one* ubiquitous source – the ILEC – for local, 'last-mile' transmission facilities (principally high-capacity loops and enhanced extended links ('EELs')) in each metropolitan area where it wishes to provide service.") (emphasis in original).

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- demand for high capacity services is highly concentrated with 80 percent of the demand for high capacity services in just eight percent of wire centers;
- competing providers have targeted deployment of their facilities to serve that demand, with an average of 20 competitor networks in the top 50 MSAs in the country;
- at least one competing provider has conceded that it earns the "majority of [its] revenue .. .exclusively through [its] own network facilities ..." and boasts that "[w]hile [RBOCs] have lots of fiber deployed, I don't know that they have more buildings connected than we do in all cases;"
- Time Warner Telecom itself operates local fiber that connects to at least 3,800 buildings; MCI operates its own networks in 28 of the top 30 MSAs; and
- contrary to Time Warner Telecom's claims that "there are no widespread intermodal end user connections in the business market,"[3] competing providers are using fixed wireless and cable to reach customers, with 40 percent of large businesses, 29 percent of mid-sized businesses, and 23 percent of small businesses using fixed wireless for at least some high-capacity services and 41 percent of large businesses, 32 percent of mid-sized businesses, and 44 percent of small business using cable modem service for some high-capacity services.

As this evidence and the maps attached at tabs A, D and E show, competing providers have deployed their own facilities wherever significant demand for high capacity services exists.

Second, the evidence shows that rather than inhibiting competition –as MCI claims,[4] Verizon special access is facilitating additional competition for high capacity services. To the extent competing providers have chosen to use incumbent special access services to reach customers, they have competed successfully for retail customers of all types and sizes. As the maps attached at tabs A, E, and F show, competing providers are using Verizon special access services not only to extend the reach of their networks in outlying areas where competing facilities have not yet been deployed, but also in areas that have significant deployment of competitive facilities. This means that carriers can successfully compete with CLEC-fiber by purchasing special access services and using them as the basis for some or all of their high capacity services to end-users. These carriers are successfully using special access by purchasing these services at steep volume and term discounts of 35 to 40 percent off base rates and then using these circuits to provide high-capacity services to their own customers. And competing providers are using special access to serve not only large enterprise customers but also small and medium-sized businesses such as antique dealers, book stores, dry cleaners, florists, gas stations, hair dressers, and travel agents to name a few.

Third, other providers not only are able to compete successfully, but actually dominate key market segments. Indeed, competing providers such as AT&T dominate the large enterprise segment of the market, the most valuable segment of the telecom industry and a market that accounts for the

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3 Time Warner Telecom Comments at 10.

4 MCI Comments at 19-20.

vast majority of high-capacity demand. AT&T, MCI, and Sprint account for nearly half of all revenues from larger enterprise customers and are the primary service provider for nearly three-quarters of larger corporate accounts. In contrast, within its region, Verizon accounts for only 9 percent of the $28 billion spent on network-related service by the 400 companies with the highest annual telecommunications expenditures. Accordingly, Royce Holland explains that "[t]he large corporate enterprise market ... is all but irrelevant to the debate over competition policy because there are no bottleneck facilities."

In short, there is extensive competition to provide high capacity services to business customers of all shapes and sizes, and IP-enabled service providers have a number of competitive alternatives to ILEC special access. In addition, however, the fact that competitors are using special access to compete successfully for customers both in areas where competitive facilities have not been widely deployed but more importantly in areas where competitive facilities have been deployed and competition is thriving proves that the rates competitors are paying for special access services are competitive. Under these circumstances, there simply is no justification for the Commission to require wholesale access to ILEC broadband transmission facilities, as Time Warner Telecom and Z-Tel request, or to revisit pricing flexibility for special access, as MCI requests.

Please do not hesitate to contact me with any questions.

Sincerely,

Enclosures

cc: Darryl Cooper
Russell Hanser
Jeremy Miller
Terri Natoli
Thomas Navin
Christi Shewman
Julie Veach

DOCKET NO. 04-36

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Re: IP-Enabled Services, WC Docket No. 04-36

Dear Ms. Dortch:

In the last several weeks, Verizon has submitted extensive evidence describing the widespread deployment of competing voice telephone services by cable companies and Voice over Internet Protocol ("VoIP") providers, as well as increasing competition from wireless and other intermodal providers and competitors that have deployed their own circuit switches.[1] These developments conclusively show that competition is not impaired without access to unbundled mass market switching both as a general matter and in the specific areas served by Verizon. This evidence, which is enclosed, includes detailed maps graphically depicting the scope of competition as well as white papers, declarations, and other supporting materials and is relevant to this proceeding for the following reasons.

First, as a general matter, recent developments further demonstrate that competition is not impaired without access to unbundled switching nationwide.

- As of the end of 2003, cable companies already offered circuit-switched voice telephony to 15 percent of homes nationwide, and were rolling out VoIP to many more.

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1 *See* Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, CC Docket Nos. 01-338, 98-147 and 96-98 at 10, 15 (filed June 24, 2004); Letter from Michael E. Glover, Verizon, to Marlene H. Dortch, FCC, CC Docket Nos. 01-338, 98-147 and 96-98 at 19, 29 (filed July 2, 2004).

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- By the end of 2004, cable companies plan to offer VoIP to more than 24 million homes over their networks, and plan to offer it to at least 20 million more the following year; and of course the number of lines is even larger.
- Regardless of whether cable companies themselves offer VoIP, the 85-90 percent of U.S. homes that have access to cable modem service also have access to VoIP from multiple providers ranging from the major long distance carriers to national VoIP providers like Vonage.
- Wireless carriers are aggressively competing both for lines and for traffic: during the last two years, the number of wireless lines has grown from 137 million to 155 million while the number of wireline lines has declined; the percentage of users giving up their landline phones has grown from 3-5 percent to 7-8 percent; and wireless traffic has grown from 16 to 29 percent of all voice traffic and to 43 percent of long distance traffic.
- Competing carriers now have some 10,000 circuit switches and packet switches nationwide, and have used their switches to provide voice telephone service in wire centers that contain 86 percent of Bell company access lines nationwide.

Second, these competitive developments are particularly pronounced in the top 25 MSAs (based on number of access lines) where Verizon provides local services as the incumbent.

- Cable companies already offer voice telephone service, either circuit-switched or VoIP, to more than 12 million homes in Verizon's service areas.
- Regardless of whether the cable companies themselves offer VoIP, approximately 92 percent of the population in Verizon's top 25 MSAs now have access to cable modem service, and therefore also have access to VoIP from numerous alternative VoIP providers at competitive prices.
- Wireless service is available from multiple competing providers in Verizon's top 25 MSAs at prices that are directly competitive with wireline voice telephone service.
- Competing carriers are using their own switches to serve at least 2.1 million mass market lines in Verizon's top 25 MSAs, and are capable of and are serving mass market customers throughout these MSAs.

As this evidence and the maps attached at tabs A, B, C and D show, competing providers are offering voice telephone services throughout the areas served by Verizon.[2]

Third, competing providers are offering voice telephone services to mass market customers at rates that compete directly with traditional telephone service. For each of Verizon's 25 top MSAs, Verizon has prepared charts that compare the prices and features of the voice telephone service offerings of several leading competitors, including VoIP and wireless offerings. These

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2 So that this evidence can be made publicly available, Verizon has not included Attachment 2 to the Declaration of Ronald H. Lataille, which contains confidential, CLEC-specific information.

charts show that competitors' voice telephone offerings are very competitive in terms of the services and features included. For example, AT&T offers VoIP service in 100 major metropolitan markets for $34.99 per month. Time Warner offers a bundled package of local and long distance service for $39.95. Cablevision offers a similar package for $34.95. Cablevision also recently introduced a bundled package of local and long distance, high speed Internet access, and digital cable for $89.85 – about the same price it previously charged for high speed Internet access and digital cable alone. The result, according to Cablevision, is that customers "are essentially receiving their voice service for free." Vonage offers an unlimited local and long distance package for only $29.99. And BroadVoice and Packet8 offer similar packages for $19.95. *Id.*

In short, there is extensive competition to provide voice telephone service, and long distance service in particular, to mass market customers. Under these circumstances, there simply is no justification for finding that competition for long distance services is impaired without access to UNE switching. Accordingly, the provision of unbundled switching or UNE-P for that service cannot be "required" under section 251(c). There accordingly is no justification for the Commission to require that UNE-P be provided at TELRIC rates, or to allow the CLEC to collect access charges in connection with the exchange access the incumbents provide when the CLECs' customers make long distance calls. Furthermore, given that the incumbents already are losing a significant percentage of access charges even outside of the UNE-P context as a result of the intermodal competition described above, any such rule also is directly contrary to the public interest and basic principles of competitive neutrality.

Please do not hesitate to contact me with any questions.

Sincerely,

Kathleen Grillo

Enclosures

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